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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,263	10/24/2001	Tom C. Xu		6959

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EXAMINER	
ALEXANDER, LYLE	
ART UNIT	PAPER NUMBER
1797	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/038,263	XU, TOM C.	
	Examiner	Art Unit	
	LYLE A. ALEXANDER	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *122-135* is/are pending in the application.

4a) Of the above claim(s) *122* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *123-135* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claim 122, drawn to a method of determing the concentration of an analyte, classified in class 436, subclass 164.

II. Claims 123-135, drawn to a fiber optic apparatus with a dried reagent coated on one end of the fiber, classified in class 422, subclass 82.05.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process that does not require a "working membrane", rather the instant apparatus claims require a membrane that is impregnated with a reagent. The "working membrane" of the method claims could be electrochemical and not require a reagent.

3. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);

(d) the prior art applicable to one invention would not likely be applicable to another invention;

(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected invention**.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Newly submitted claim 122 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See the above restriction requirement.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 122 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03

Claim Objections

5. Claims 124-129 are objected to because of the following informalities: These claims contain a typographical error related to their dependency to "claim 023". For the purposes of examination, the Office will assume Applicant intended these claims to be dependent upon "claim 123". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1.

Claims 123-135 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Taylor et al. (USP 6,682,893).

Taylor et al. teach a fiber optic connected to a gel matrix that is impregnated with reagent. Paragraph[043] teach the gel matrix includes glucose oxidase and has been read on the claimed "oxidase/peroxidase enzymes." Paragraphs[84+] teach the gel is attached to a "tape" and associated with a machine readable indicia and have been read on the claimed "bonding." Paragraph[101] teaches the gel matrix is attached to an optical fiber or fiber optic rod and has been read on the claimed "optical fiber." Paragraph[129] teaches the gel pads can be deposited in an array on the optical fiber and have diameter of less than 500 microns in diameter. The teaching of the "diameter" has been read on the gel matrix being circular in shape when deposited on the end of the optical fiber. Paragraph[149] teaches using the gel matrix with glucose oxidase to detect glucose. Paragraphs[152-155] teach attachment of the gel matrix to the optical fiber by various methods that include3 hydrophilic/hydrophobic interactions. The claim language " ... wherein said first and second ends are polished ..." is not specific to the intended physical alterations of the tip and is sufficiently broad to have been properly read on Taylor et al. The taught optical fiber is inherently associated with a photometrical detector because why else would an optical fiber be used and how else could the results be obtained.

Claims 123-135 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Garcia et al. (USP 4,637,403).

Garcia et al. teach a personal glucose detector that is in the shape of a pen and has a LCD display for the glucose concentrations. The device(30) comprises an outer housing(32) and a core portion(34) disposed within the housing. An optical measurement means(50) comprises a phototransistor(52) connected to the appropriate electronics to quantify the blood glucose level are all with the housing(32). A reagent strip(94) is within the housing(32) and is contacted with needle(90) to receive a blood sample. Column 8 lines 28-33 teach the glucose is quantified colorimetrically and/or photometrically and/or conductivity/impedance. The claim language " ... wherein said first and second ends are polished ..." is not specific to the intended physical alterations of the tip and is sufficiently broad to have been properly read on Garcia et al.

Response to Arguments

Applicant's arguments filed 2/19/10 have been fully considered but they are not persuasive.

Applicant states claims 123-135 are newly submitted, but do not provide any guidance on how these new claims differ in scope from the 8/21/09 claims or how/why these new claims 123-135 define over the art of record. The Office has considered new claims 123-135 and maintains these claims are properly rejected by the cited references for the reasons of record.

Conclusion

2. This is a continuation of applicant's earlier Application No. 10/038263. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

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Primary Examiner, Art Unit 1797